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NOT TO BE PUBLISHED IN OFFICIAL REPORTS

IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

FIRST APPELLATE DISTRICT

DIVISION TWO

LAUREN BARGHOUT et al., Plaintiffs and Appellants, v. PEARSON, SIMON & WARSHAW LLP, Defendant and Respondent.	A154080 (Alameda County Super. Ct. No. RG16826112)

Plaintiffs and appellants, Dr. Lauren Barghout and Paravue Corporation (plaintiffs), appeal from the judgment entered against them after defendant and respondent, Pearson, Simon and Warshaw LLP (PSW or defendant), successfully demurred to plaintiffs' complaints. We affirm the judgment.

Paravue is a corporation and Barghout is its founder, director, CEO, largest shareholder and a secured creditor. In 2014, Paravue hired PSW to represent it on a contingency basis in malpractice claims Paravue asserted against the law firm of Heller Ehrman LLP, which was at the time in bankruptcy. Barghout and PSW also entered an oral agreement with Incline Texas LLC (ITex), under which the latter provided litigation financing for Paravue's claims against Heller.

PSW unsuccessfully opposed Heller's motion for summary judgment, which the bankruptcy court granted on the ground that Paravue's claims were barred by the statute of limitations. Thereafter, a dispute arose between Paravue and PSW concerning PSW's provision of legal services to Paravue in the Heller litigation. In August 2015, the two entered a Settlement and Mutual Release Agreement (settlement agreement) in which

PSW paid Paravue $75,000 in consideration for a "final and absolute resolution of the Dispute" including a release of all claims relating to the parties' dispute.

A year later, in August 2016, plaintiffs sued PSW,[1] asserting claims for legal malpractice and breach of fiduciary duty. Their complaint alleged PSW had been negligent in failing to locate and include in opposition to summary judgment certain billing records Heller had issued to Paravue that would have shown Paravue's attorney-client relationship with Heller was longer than Heller had apparently represented and that PSW's proper use of these records would have defeated Heller's statute of limitations defense. Specifically, plaintiffs alleged PSW discovered the records after it had filed plaintiffs' opposition to the motion but failed to submit them to the bankruptcy court. Plaintiffs also alleged PSW had failed to disclose to them an email PSW had received from Paravue's former counsel that indicated he had delivered the billing records to PSW when he transferred the case file to them. Plaintiffs further alleged they entered the settlement agreement with PSW while PSW was still representing them and that PSW did not reveal that information or advise plaintiffs to obtain independent counsel. Further, plaintiffs alleged, PSW declined to continue representing Paravue in its claims against Heller, with the result that Paravue was required to return the funds advanced as litigation financing to ITex.

PSW demurred to the complaint, which plaintiffs then amended. PSW again demurred, successively, to each of plaintiffs' first amended, second amended, third amended and fourth amended complaints. In each instance except the last, the court sustained the demurrer with leave to amend as to some parties and causes of action. Its final order sustained the demurrer to the fourth amended complaint without leave to amend as to all remaining parties and causes of action.

[1] There was a third plaintiff, a Dr. Kurtovic, whose claims were dismissed at an early stage and who has not appealed. His claims and the ruling dismissing them are not pertinent to this appeal.

DISCUSSION

The standard of review governing an order sustaining a demurrer without leave to amend is "long-settled." (*Blank v. Kirwan* (1985) 39 Cal.3d 311, 318.) " 'We treat the demurrer as admitting all material facts properly pleaded, but not contentions, deductions or conclusions of fact or law. [Citation.] We also consider matters which may be judicially noticed.' [Citation.] Further, we give the complaint a reasonable interpretation, reading it as a whole and its parts in their context. [Citation.] When a demurrer is sustained, we determine whether the complaint states facts sufficient to constitute a cause of action." (*Ibid*.) We " 'determine de novo whether the complaint alleges facts sufficient to state a cause of action or discloses a complete defense.' " (*McBride v. Smith* (2018) 18 Cal.App.5th 1160, 1172–1173.)

Plaintiffs challenge six aspects of the trial court's demurrer rulings. First, Barghout asks us to overrule the trial court's holding that she could not pursue Paravue's claims based on an alleged assignment by Paravue of those claims to her. Second, plaintiffs contend the trial court erred in ruling that Paravue's claims are barred by the settlement agreement. Third, they argue we should overrule the trial court's dismissal of Paravue's claims based on its failure to employ counsel to represent it in the case because the longstanding rule that corporations must be represented in court proceedings by counsel violates Paravue's First Amendment rights. Fourth, Barghout claims she is entitled to pursue Paravue's claims against PSW as a third-party beneficiary of the retainer agreement between PSW and Paravue. Fifth, Barghout claims the trial court erred in dismissing the individual claims she alleged for fraud and negligent misrepresentation in the fourth amended complaint. Sixth and last, Barghout argues the court should not have dismissed her claim against PSW based on an alleged oral agreement between her and PSW.

I.

Barghout Has Failed to Establish Error.

We begin with the arguments unique to Barghout, which fall into two categories: first, that she is entitled to pursue Paravue's claims (the assignment argument and the

third-party beneficiary argument) and second, that she has individual claims for misrepresentation and breach of an oral agreement.

A. Barghout Cannot Pursue Paravue's Claims As Assignee or Third-Party Beneficiary.

In their first amended complaint (FAC), plaintiffs alleged that Barghout "owns Paravue causes of action, assigned to her by Paravue corporation." In its demurrer to the FAC, PSW argued that Barghout could not establish standing based on an assignment because "the general rule in California precludes the assignment of legal malpractice claims on policy grounds," citing *White Mountains Reinsurance Co. of America v. Borton Petrini, LLP* (2013) 221 Cal.App.4th 890 (*White Mountains*) and *McDermott, Will & Emery v. Superior Court* (2000) 83 Cal.App.4th 378. The trial court agreed and sustained the demurrer as to Barghout's claims with leave to amend, holding the facts plaintiffs alleged did not show PSW represented Barghout, it thus owed no fiduciary duties or duty of care to her personally, "the general rule is that a claim for legal malpractice cannot be assigned," and plaintiffs did "not attempt to set out facts that support an exception to the general rule."

Barghout acknowledges the rule barring assignment of malpractice claims but argues it should not be applied here for two reasons. First, she contends that the public policy concerns underpinning the rule are not implicated by the assignment in this case and that other cases applying the rule to corporate creditors and shareholders are distinguishable. Second, she urges us to reconsider the rule, which she contends is contrary to a longstanding statute generally permitting assignment of causes of action.

Barghout is correct in arguing that the rule against assignment of legal malpractice claims is grounded in public policy concerns. The rule was established 43 years ago in *Goodley v. Wank & Wank, Inc.* (1976) 62 Cal.App.3d 389 (*Goodley*). More recently, our Supreme Court recognized the rule, acknowledging the policy considerations on which it is based, and observing that those policy concerns " 'usually have been persuasive for the courts that have considered the issue.' " (*Musser v. Provencher* (2002) 28 Cal.4th 274,

286 (*Musser*), quoting 1 Mallen & Smith, Legal Malpractice (5th ed. 2000) Insurance Counsel, § 7.12, p. 720.)

In *Goodley* the court noted that although Civil Code sections 953 and 954 generally "effected a change in the common law rule of nonassignability of choses in action" by providing that causes of action arising out of violation of property and contract rights may be assigned, excepted from the rule of assignability were " ' "wrongs done to the person, the reputation, of the feelings of the injured party, and to contracts of a purely personal nature, like promises of marriage." ' " (*Goodley*, *supra*, 62 Cal.App.3d at p. 393.) Thus, personal injury claims are not assignable, whereas contract claims generally are. Malpractice claims, the court explained, while arising out of a contract for legal services, essentially "sound[] in tort"; their "gravamen . . . is the negligent breach by defendants of a duty to [the client]." (*Id*. at p. 395.) In holding such claims are not assignable, the court relied on the "uniquely personal nature of legal services and the contract out of which a highly personal and confidential attorney-client relationship arises, and public policy considerations based" on that relationship. (*Ibid*.) The court described the policy concerns as follows.

"The assignment of such claims could relegate the legal malpractice action to the market place and convert it to a commodity to be exploited and transferred to economic bidders who have never had a professional relationship with the attorney and to whom the attorney has never owed a legal duty, and who have never had any prior connection with the assignor or his rights. The commercial aspect of assignability of choses in action arising out of legal malpractice is rife with probabilities that could only debase the legal profession. The almost certain end result of merchandizing such causes of action is the lucrative business of factoring malpractice claims which would encourage unjustified lawsuits against members of the legal profession, generate an increase in legal malpractice litigation, promote champerty and force attorneys to defend themselves against strangers. The endless complications and litigious intricacies arising out of such commercial activities would place an undue burden on not only the legal profession but the already overburdened judicial system, restrict the availability of competent legal

services, embarrass the attorney-client relationship and imperil the sanctity of the highly confidential and fiduciary relationship existing between attorney and client." (*Goodley*, *supra*, 62 Cal.App.3d at p. 397.)

Barghout contends these concerns are not implicated here for several reasons. First, she contends "no issue of duty or confidentiality applies" because she "was the CEO, a Board member and primary contact to PSW, in addition to being Paravue's largest shareholder and largest debtholder" and "already had and has full access to all attorney-client communications." Further, she argues, "she is the primary 'natural' person to whom the benefits of any duties to Paravue would flow." The problem with these arguments is that they effectively disregard the separate existence of the corporate entity, treating it effectively as the alter ego of Barghout.

Barghout's arguments that, having founded and taken advantage of the benefits that derive from corporate structure, she should be allowed now to disregard that structure when it suits her fail to persuade. If anything, her assertions that there is little daylight between herself and Paravue only underscore the concerns raised in *Goodley*. PSW, as counsel retained by Paravue—and not Barghout individually—in the Heller litigation, assumed obligations directly to Paravue and had an ethical obligation to Paravue, not to Barghout. That she was its founder, CEO, a shareholder and creditor, and acted on the corporation's behalf in its dealings with PSW, did not give *PSW* license to act as if its duties were to her personally. Rather, the firm was ethically obligated to the corporation and was required to put its interests above those of Barghout or any other officer, shareholder, creditor or employee. Nor does the fact that Barghout was privy to many or even all of the attorney-client communications between Paravue and PSW mean either that she is the holder of the attorney-client privilege or that she is free to waive the privilege for her own benefit.[2]

[2] In their briefs, plaintiffs assert "Paravue assigned to Dr. Barghout in trust its claims against PSW" and that "[a]ny recovery achieved by Dr. Barghout would be in trust for the benefit of Paravue, not Dr. Barghout." The record citations they provide fail to support this assertion; the portions of the original and second amended complaints she

Contrary to Barghout's assertions, allowing corporate founders and/or officers to pursue malpractice claims belonging solely to the corporation, directly implicates the policy concerns raised by *Goodley* and its progeny. Specifically, allowing such assignments would threaten to undermine attorneys' ethical duties, including the duty of undivided loyalty, to corporate clients. (See *Venture Law Group v. Superior Court* (2004) 118 Cal.App.4th 96, 102 ["The attorney's duty of loyalty is to the corporate entity"]; Rules Prof. Conduct, rule 1.13.) The specter of an officer filing a later-assigned claim for malpractice could give an attorney pause in providing unvarnished advice or otherwise pursuing the corporation's interest when that interest conflicts with that of the officer. Further, if the entity has no interest in pursuing litigation, the waiver of its attorney-client privilege ordinarily will not be in the corporation's interest, and yet an officer pursuing a malpractice claim will need to waive that privilege for her own benefit. Finally, such an assignment implicates the concerns the *Goodley* court discussed regarding increased burdens on the legal profession and judicial system and the risk of increasing the cost and restricting the availability of competent legal services.

The cases on which plaintiffs rely in arguing we should create an exception to the *Goodley* rule here do not involve assignment of malpractice claims by corporate clients to their officers, shareholders or creditors. *White Mountains*, *supra*, 221 Cal.App.4th 890, for example, involved one insurance company's transfer of all its assets, rights, obligations and liabilities to another insurance company, and among those assets was a claim against an attorney whose failure to respond to a policy limits offer dramatically increased the exposure of the company in a suit against one of its insureds. (*Id.* at pp. 892–893.) The court there recognized a "narrow exception" to the rule barring assignment of malpractice claims where the assignment "is only a small, incidental part of a larger commercial transfer between insurance companies" of rights, obligations, assets and liabilities. (*Id.* at p. 892.)

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cites contain no such allegation. We therefore need not address whether a conclusory allegation to that effect would make a difference.

Similarly, *Musser, supra,* 28 Cal.4th 274, involved an indemnity claim by one attorney sued for malpractice against another attorney, a specialist consulted on the matter for which the first attorney had been sued, and a subrogation claim of the first attorney's insurer of that attorney's indemnity claim against the second attorney. (*Id.* at pp. 276, 277–278.) And *Hartford Casualty Ins. Co. v. J.R. Marketing, L.L.C.* (2015) 61 Cal.4th 988 (*Hartford Casualty*) addressed whether an insurance company that paid the invoices of Cumis counsel retained for its insured could, when the representation was complete, initiate an action against that counsel for overbilling.

In none of these cases did the courts abrogate the general rule against assignment of malpractice claims. Indeed, as the court noted in *White Mountains*, "[s]ince *Goodley* was decided in 1976, California courts have consistently adhered to the *Goodley* court's conclusion that a cause of action for legal malpractice is not assignable for public policy reasons." (*White Mountains*, *supra*, 221 Cal.App.4th at p. 897.) Further, in both *Musser*, *supra,* 28 Cal. 4th at pages 285–286, and *Hartford Casualty*, *supra*, 61 Cal.4th at page 1006, our Supreme Court recognized the *Goodley* rule, and in *Hartford* referred to it as "California's established prohibition on the assignment of legal malpractice claims." (*Hartford Casualty*, at p. 1006.) The high court also observed that the rule " ' "protect[s] the integrity of the uniquely personal and confidential attorney-client relationship" ' " and "guards against the unseemly and burdensome commercialization of claims arising from professional duties owed by an attorney exclusively to his or her client." (*Ibid.*)

In view of our Supreme Court's endorsement of the general rule banning assignment of malpractice claims, and plaintiffs' failure to demonstrate that the assignment here falls within an established exception or otherwise justifies an exception from the rule, we decline to revisit the rule as plaintiffs have requested.

The trial court did not err in holding that the *Goodley* rule barring assignment of malpractice claims required the dismissal of Barghout's claims based on the alleged assignment to her of Paravue's claims against PSW for malpractice and breach of fiduciary duties. We therefore must address whether her alternative argument, that she

had standing to pursue those claims as the third-party beneficiary of Paravue's retainer agreement with PSW, provides a basis for her to pursue such claims.

In her fourth amended complaint, Barghout alleged that PSW was retained by Paravue to represent it in the Heller litigation, that in the course of this representation PSW became aware of Paravue's secured debt obligation to Barghout, that Paravue communicated to PSW its desire to pay its secured and unsecured obligations to Barghout out of any proceeds it received from the Heller litigation, and that PSW therefore owed Barghout a duty of due care because she was an intended beneficiary of PSW's representation of Paravue. Barghout relies on *Donald v. Garry* (1971) 19 Cal.App.3d 769. That case is inapposite. There, a credit collection agency, retained by the plaintiff, hired an attorney to pursue the plaintiff's own creditor claims. (*Id*. at p. 770.) It is true that the collection agency hired the attorney on the plaintiff's behalf, but the legal services were being performed directly for the benefit of the plaintiff, specifically to collect on the debt he was owed. PSW was not hired to collect any debt owed to Barghout. Rather, as alleged in the complaint, it was hired to pursue *Paravue's* claims against Heller, and any recovery in that litigation would belong to Paravue, not Barghout. That Barghout might ultimately and indirectly benefit from that recovery, in that the recovery would enable Paravue to repay its debts, including its debts to Barghout, does not make her a third-party beneficiary of the retainer agreement.

In a supplemental brief we granted PSW permission to file, it addresses a recent decision by the California Supreme Court explicating the doctrine of third-party beneficiaries under California law, *Goonewardene v. ADP, LLC* (2019) 6 Cal.5th 817 (*Goonewardene*). In that case, an employee sought to sue the payroll services company with which her employer had contracted, contending it failed to calculate properly the wages and benefits she was owed. (*Id*. at p. 820.) The Supreme Court rejected her contention that she could sue the payroll services company directly for the wages allegedly due under the third-party beneficiary doctrine. (*Id*. at pp. 821, 837.) The court set forth a three-part test to determine whether a non-contracting party is a third-party beneficiary of a contract between others. "[A] review of this court's third party

beneficiary decisions reveals that our court has carefully examined the express provisions of the contract at issue, as well as all of the relevant circumstances under which the contract was agreed to, in order to determine not only (1) whether the third party would in fact benefit from the contract, but also (2) whether a motivating purpose of the contracting parties was to provide a benefit to the third party, and (3) whether permitting a third party to bring its own breach of contract action against a contracting party is consistent with the objectives of the contract and the reasonable expectations of the contracting parties. All three elements must be satisfied to permit the third-party action to go forward." (*Id.* at pp. 829–830, fn. omitted.)

Regarding the "motivating purpose" element, the court observed that "the contracting parties must have a motivating purpose to benefit the third party, and not simply knowledge that a benefit to the third party may follow from the contract." (*Goonewardene, supra,* 6 Cal.5th at p. 830.) The third element, the court explained, "does not focus upon whether the parties specifically intended third party enforcement but rather upon whether, taking into account the language of the contract and all of the relevant circumstances under which the contract was entered into, permitting the third party to bring the proposed breach of contract action would be 'consistent with the objectives of the contract and the reasonable expectations of the contracting parties.' [Citation.] In other words, this element calls for a judgment regarding the potential effect that permitting third party enforcement would have on the parties' contracting goals, rather than a determination whether the parties actually anticipated third party enforcement at the time the contract was entered into." (*Id.* at pp. 830–831.) Further, the court described the third element as "comparable to the inquiry, proposed [by a legal commentator], regarding whether third party enforcement will effectuate ' "the contracting parties' performance objectives," ' namely 'those objectives of the *enterprise* embodied in the contract, read in the light of surrounding circumstances . . . .' [Citation.] And the additional requirement in this element that third party enforcement be consistent as well with 'the reasonable expectations of the contracting parties' reflects the teaching of prior California decisions that have denied application of the third-party beneficiary

doctrine when permitting the third party to maintain a breach of contract action would not be consistent with the reasonable expectations of the contracting parties." (*Id.* at p. 831.)

As in this case, the court in *Goonewardene* was addressing the issue of third-party beneficiary status in the context of a judgment of dismissal following the sustaining of demurrers and did not have in the record before it the actual contract that was the subject of the plaintiff's claim. (*Goonewardene*, *supra*, 6 Cal.5th at pp. 832–833.) It therefore relied on the allegations of the complaint, which it necessarily assumed were true. (*Id.* at p. 833.) The court noted there was a general allegation that the contract was intended to benefit the employees as well as the employer but noted the complaint "leaves unclear in what sense the contract was intended to benefit the . . . employees." (*Ibid.*) Here, without referring to contract terms, Barghout alleges Paravue "shared documents to confirm the client's wishes that Barghout was to be paid first for her secured debt and for consultant fees from any settlement proceeds or from any judgment after trial in favor of Paravue." *Goonewardene* indicates that the general intent that a creditor may benefit in some way from the contract does not suffice. Rather, under the third prong of the test, the facts alleged must indicate that third party enforcement "will effectuate ' "the contracting parties' performance objectives," ' namely 'those objectives of the *enterprise* embodied in the contract, read in the light of surrounding circumstances . . . .' " (*Id.* at p. 831.) The purpose of the contract between Paravue and PSW was for PSW to represent Paravue in its malpractice claim against Heller in the bankruptcy court. If successful, Paravue would have recovered funds from Heller's bankruptcy estate. That, not the payment by Paravue of its debts to Barghout, was the "enterprise embodied in the contract." In *Goonewardene*, the court distinguished cases "in which one party to the contract (the promisor) agreed to pay a sum of money to a third party to discharge a preexisting debt of the other party to the contract (the promisee)" because "there [was] nothing to suggest that [the payroll services company] agreed to pay the wages that [the employer] owes to its employees out of [the payroll services company's] own funds." (*Id.* at p. 834.) Likewise, here there is nothing to suggest that PSW agreed to pay the debts Paravue owes to Barghout out of PSW's own funds. Instead, it agreed to assist

Paravue in recouping losses Paravue had sustained because of a prior law firm's malpractice, which Paravue could then use for its operations or to retire its debt or for other corporate purposes.[3]

Finally, in our judgment, allowing a corporate officer/creditor to sue the debtor corporation's law firm as a third-party beneficiary of the retainer agreement could undermine important purposes of an attorney-client relationship that would be inconsistent with the contracting parties' expectations, as we have already explained. For all of these reasons, we conclude that the trial court did not err in holding Barghout could not sue to enforce PSW's duty of care and fiduciary duties to Paravue on a third-party beneficiary theory.

B. Barghout Has Failed to Allege Facts Sufficient to State Causes of Action on Her Own Behalf.

1. *Fraud and Negligent Misrepresentation*

In the fourth amended complaint, Barghout attempted to recast her malpractice allegations against PSW into fraud and negligent misrepresentation claims. Specifically, she realleged the malpractice allegations as part of her misrepresentation claims, including the allegation that PSW filed its opposition to Heller's motion for summary judgment but failed to include invoices that would have established a timeline showing representation by Heller through a date late enough to defeat Heller's statute of limitations argument and therefore its summary judgment motion. She then alleges that PSW "invited Barghout to rely on its opinion that PSW had not received an email from Paravue's prior attorney with Heller Ehrman invoices attached," which statement she alleges was "false." She alleges that PSW knew she would rely on this statement and repeat it to Paravue's investors, who as a result sued her, resulting in damage to her

[3] As the trial court noted, addressing a direct negligence theory that Barghout does not raise on appeal, Barghout "would not have been repaid unless Paravue recovered on its claims against Heller Ehrman, the bankruptcy estate was sufficient to pay the judgment in favor of Paravue, Paravue determined to use the proceeds to repay [Barghout] and Paravue's other creditors were not entitled to payment before or at the same time as [Barghout]."

reputation and loss of finders' fees. She further alleges that she lost "the opportunity to raise funds for other companies" as a result.

The trial court sustained PSW's demurrer to these causes of action without leave to amend for two reasons. First, Barghout's opposition to PSW's demurrer did not address these causes of action, which the trial court construed "as a concession that the Third and Fourth Causes of Action do not state a cause of action and cannot be amended to do so." Second, the court observed that Barghout's misrepresentation claims in any event failed on their merits because she "does not allege, and the circumstances do not show, that any representation was made to [Barghout] in some capacity apart from her role as a representative of Paravue. PSW's contractual and common law duties were owed to Paravue only, and thus any statements PSW made to [Barghout] were based on her status as a majority shareholder of Paravue. [Barghout's] conduct in reliance upon such representations in communicating with Paravue's investors was based on her role as Paravue's representative. The fact that [Barghout] was acting at all times as Paravue's representative is readily apparent from the Fourth Amended Complaint and her prior pleadings, as is the fact that PSW's communications with her arose out of its representation of Paravue. In her role as Paravue's representative, [Barghout] could not reasonably rely, as an individual, on statements made to her by Paravue's attorney." The court further stated, "[i]n addition, facts must be alleged with particularity, but [Barghout] fails to allege facts showing how PSW's representation that it had not received an email, with Heller Ehrman invoices attached to it, from Paravue's prior attorney resulted in the lawsuit by 'investors' or destroyed her ability to raise funds from other unidentified companies."

The trial court was entitled to treat Barghout's failure to brief the demurrer to her negligent and intentional misrepresentation claims as a waiver. Moreover, we agree with the trial court's assessment of the lack of merit in these claims. Fraud and negligent misrepresentation claims must be pled with particularity. (*Tarmann v. State Farm Mut. Auto. Ins. Co.* (1991) 2 Cal.App.4th 153, 157 [fraud]; *Cadlo v. Owens-Illinois, Inc.* (2004) 125 Cal.App.4th 513, 519.) Barghout's allegations are deficient in a several

respects. In her brief on appeal, she claims she alleged that "PSW *concealed* from her an email from [Paravue's prior attorney] that included the July 2007 invoices from Heller Ehrman, and further told her that, once found, such invoices could be introduced into the appellate record." (Italics added.) However, the fourth amended complaint is not clear as to whether she contended PSW made a factual misrepresentation to her about the email or concealed it. If it was concealment she alleged, she failed to allege facts showing either a relationship between her personally and PSW that gave rise to a duty to disclose (see *Hoffman v. 162 North Wolfe LLC* (2014) 228 Cal.App.4th 1178, 1189) or a misleading representation that would support a duty to provide complete disclosure. (See *id*. at p. 1191, discussing *Pavicich v. Santucci* (2000) 85 Cal.App.4th 382.) The contractual and attorney-client relationship she alleged was between PSW and Paravue, not between PSW and Barghout. And if it was an affirmative representation she intended to allege, the complaint does not set forth specifically how Barghout *as an individual* (rather than a representative of Paravue) relied on the alleged falsity or how any such reliance caused her personally to suffer damages. Her discussions with Paravue investors were made in a representative capacity; indeed, she alleged that she acted "as an independent consultant for Paravue in obtaining investors for Paravue," for which Paravue paid her. Further, she failed to allege any connection between any actions she took in reliance on PSW's allegedly false statement about what emails it had received from Paravue's former attorney and her allegedly damaged "reputation with investors," their alleged suit against her, or her loss of "finder's fees and the opportunity to raise funds for other companies." In short, the trial court did not err in sustaining the demurrer to Barghout's misrepresentation claims, which appear to represent nothing more than a vague and convoluted effort to convert Paravue's malpractice claim into a tort claim by Barghout against PSW.

2. *Breach of Oral Contract*

In her third amended complaint, Barghout alleged that PSW's alleged concealment of the email from Paravue's former counsel to PSW, "which made clear that Heller's billing records had been delivered to PSW upon transfer of the case files," constituted a

breach of an oral agreement between PSW, the litigation funding company, ITex, Barghout and a Dr. Kurovic.[4] Among the terms of that agreement, she alleged, were that PSW would keep her "informed of any and all matters relevant [to] obtaining financial recovering of claims against Heller Ehrman" and that she in turn "would keep ITex informed of material developments in the case." Barghout also alleged that PSW breached the agreement by failing to represent Paravue at a hearing on a motion for reconsideration in the Heller litigation and by communicating directly with ITex rather than allowing all communications to be directed by her. Finally, Barghout alleged that PSW breached its obligation to keep her informed by failing to inform her that the appellate record in the Heller litigation would be limited to the records and arguments submitted to the bankruptcy court. She alleged that as a result of these breaches she wasted time and experienced emotional distress in attempting to determine how and when Heller had produced the billing records to Paravue, Paravue hired counsel to seek a remand of the motion for reconsideration from federal district court to the bankruptcy court, and she provided inaccurate information to ITex that soured Paravue's relationship with ITex, leading ITex to sue PSW, Paravue and her.

The trial court sustained the demurrer to these claims because Barghout's allegations did "not show that PSW entered into an oral agreement with Plaintiff personally at the April 3, 2014 meeting" but rather indicates that the meeting "was to discuss PSW's representation of Paravue, and that [Barghout] was acting on behalf of Paravue in negotiating with PSW and agreeing to cooperate with PSW during the litigation. As a result, any promises made by PSW to [Barghout] to keep her informed with regard to communications in the Heller Ehrman action and to forward communications between ITex and Paravue to her arose out of PSW's agreement to represent Paravue and were clearly made on the basis of [Barghout's] status as a representative of Paravue." In agreeing to take on the representation of Paravue, PSW did not assume duties to its officers or representatives, i.e., Barghout. Further,

[4] Kurovic was a plaintiff in this action until his claims were dismissed by the trial court after a demurrer was sustained, from which rulings Kurovic did not appeal.

Barghout's allegations did not show that her "promises to cooperate provided consideration for the alleged oral agreement with PSW," and "PSW's alleged promises to [her] arose out of its agreement to act as counsel for Paravue, and the consideration for those promises was Paravue's promise to pay legal fees and to cooperate with PSW during the litigation. [Barghout's] agreement to cooperate with PSW, in her role as officer and shareholder of Paravue, during PSW's representation of Paravue did not constitute independent consideration, because she already owed those duties to PSW."

In her one paragraph argument addressing this claim in her opening brief, Barghout makes no effort to address any of the trial court's reasoning, much less explain why it was erroneous. Instead, she simply summarizes the allegations of her complaint and lists the basic elements of a breach of contract claim.

PSW contends Barghout's failure to re-assert this claim in the fourth amended complaint after the court allowed her leave to amend precludes her from challenging the trial court's ruling on appeal. We need not address this argument because Barghout has entirely failed to persuade us that the trial court's ruling sustaining the demurrer to her oral contract claim was error. Its reasoning was entirely sound.

Finally, in view of our ruling affirming the judgment, we need not address PSW's further argument that the Ninth Circuit's partial reversal of the summary judgment ruling in the Heller litigation renders any errors by the trial court harmless and renders this appeal moot.

II.

There Was No Error in Dismissing Paravue's Claims.[5]

In the original and first amended complaints, Paravue, along with Barghout, asserted claims against PSW for negligent malpractice and breach of fiduciary duty. No counsel appeared as Paravue's counsel of record. And Barghout, who is not an attorney, claimed she could represent Paravue. The court sustained PSW's demurrer to the FAC with respect to Paravue's claims on the grounds that Paravue could not appear in the action without being represented by counsel.

Plaintiffs filed a second amended complaint that added two causes of action on behalf of Barghout, but otherwise was largely unchanged. In disregard of the court's prior order, Paravue failed to obtain counsel and Barghout continued to insist she was allowed to represent Paravue. The court sustained PSW's demurrer without leave to amend as to Paravue on the ground that Paravue had failed to obtain legal counsel to represent it and also because its claims were barred by the settlement agreement.

Plaintiffs acknowledge that "California law requiring entities to be represented by counsel in court and not its principals is well-established," citing our Supreme Court's decision in *Merco Construction Engineers, Inc. v. Municipal Court* (1978) 21 Cal.3d 724. However, plaintiffs urge us to reconsider that rule, based on Justice Tobriner's dissent in *Merco*, and on the ground that hiring counsel is "not inexpensive" and requiring legal representation "deprives an entity of its First Amendment rights to seek redress." Plaintiffs further contend that requiring such representation "force[s] them to speak in a specific manner via specific means, violating the principles [against compelled speech] set forth in *Janus* [*v. American Federation of State, County & Municipal Employees, Council 31* (2018) 138 S.Ct. 2448]," and fails to "treat[] them as citizens with First

[5] In reviewing the record, we raised an issue neither party had addressed regarding whether Paravue timely appealed and whether we have jurisdiction over its appeal. The issue is a close one but, indulging in the assumption both parties have made that we have jurisdiction over Paravue's appeal, we address its claims of error.

Amendment rights as required by *Citizens United* [*v. Fed. Election Comm'n* (2010) 558 U.S. 310]."

Creative and interesting as these arguments are, plaintiffs fail entirely to develop them. To their credit, however, they cite two federal district court opinions in which similar arguments were made with respect to well-established federal law requiring entities to sue and defend through counsel in federal courts. Both opinions rejected the argument summarily. (See *Greenspan v. Admin. Office of the United States Courts* (N.D. Cal. Dec. 4, 2014) No. 14CV2396 JTM, 2014 WL 6847460 at p. *5; *Yarn Tree Designs, Inc. v. S.C. Johnson & Son, Inc.* (S.D. Iowa Apr. 11, 2014) No. 4:13-CV-00473-JEG, 2014 WL 12324289 at p. *3, fn. 3.) In *Citizens United*, the Supreme Court held the First Amendment prohibits government from restricting independent political expenditures by a nonprofit organization. While that case and others recognize that corporations have certain First Amendment rights, and we presume this includes the right to petition the government to seek redress of grievances, this obviously does not mean courts may impose no rules on parties appearing before them. As the court in *Greenspan* noted, "[f]ederal courts are not public forums." (*Greenspan*, at p. *5, fn. 11.) Nor, despite their sometimes less formal atmosphere, are state courts.

As our colleagues in Division Five of this court have explained, "[s]everal rationales lie behind" the "long-standing common law rule of procedure" that "a corporation, unlike a natural person, cannot represent itself before courts of record in propria persona, nor can it represent itself through a corporate officer, director or other employee who is not an attorney. It must be represented by licensed counsel in proceedings before courts of record." (*CLD Construction, Inc. v. City of Ramon* (2004) 120 Cal.App.4th 1141, 1145–1146.) "First, a corporation, as an artificial entity created by law, can only act in its affairs through its natural person agents and representatives. If the corporate agent who would likely appear on behalf of the corporation in court proceedings, e.g., an officer or director, is not an attorney, that person would be engaged in the unlicensed practice of law. (*Merco Constr. Engineers, Inc. v. Municipal Court* (1978) 21 Cal.3d 724, 730.) [¶] Second, the rule furthers the efficient administration of

justice by assuring that qualified professionals, who, as officers of the court are subject to its control and to professional rules of conduct, present the corporation's case and aid the court in resolution of the issues. (*Merco*, 21 Cal.3d at p. 732; *In re Victor Publishers, Inc*. (1st Cir. 1976) 545 F.2d 285, 286.) [¶] Third, the rule helps maintain the distinction between the corporation and its shareholders, directors, and officers. ([Annot., Propriety and Effect of Corporations Appearance Pro Se Through Agent Who is Not Attorney (1992)] 8 A.L.R.5th [§§ 2, 3] p. 672.)" (*Id*. at p. 1146.)

In short, plaintiffs have failed to persuade us that this longstanding and salutary rule violates any of their constitutional rights. And failing any such showing, we are not at liberty to reconsider the rule that has been affirmed by our high court. (*Auto Equity Sales, Inc. v. Superior Court of Santa Clara County* (1962) 57 Cal.2d 450, 455.)

Because Paravue's claims were properly dismissed after the trial court gave it ample opportunity to retain counsel to represent it and it declined to do so and because Barghout was not entitled, for the reasons we have stated, to pursue Paravue's claims, we need not reach the alternative ground on which the trial court rested its dismissal of Paravue's claims, namely, that they were barred by the settlement agreement.

DISPOSITION

We find no error in the trial court's demurrer rulings plaintiffs have challenged on appeal. We therefore affirm the judgment. PSW shall recover its appellate costs.

STEWART, J.

We concur.

KLINE, P.J.

MILLER, J.